

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No.: EB-07-SE-221
)	
Sprint Nextel Corporation)	Acct. No.: 201232100004
)	
)	FRN: 0003774593

ORDER

Adopted: December 2, 2011**Released: December 5, 2011**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) of the Federal Communications Commission and Sprint Nextel Corporation (“Sprint”). The Consent Decree terminates an investigation initiated by the Bureau regarding Sprint’s compliance with section 4.9 of the Commission’s rules (“Rules”)¹ pertaining to the reporting of certain network outages.

2. The Bureau and Sprint have negotiated a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Sprint possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 C.F.R. § 4.9.

² 47 U.S.C. § 154(i).

³ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Michael B. Fingerhut, Director, Government Affairs, Sprint Nextel Corporation, 2001 Edmund Halley Drive, Reston, VA 20191.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Sprint Nextel Corporation, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of section 4.9 of the Commission's rules¹ pertaining to the timely filing of network outage reports.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Compliance Plan" means the program described in this Consent Decree at paragraph 8.
 - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.
 - (g) "Investigation" means the investigation commenced by the Bureau's August 15, 2007 letter of inquiry² regarding whether Sprint violated section 4.9 of the Rules regarding the reporting of network outages.
 - (h) "Parties" means Sprint and the Bureau, each of which is a "Party."

¹ 47 C.F.R. § 4.9.

² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Laura Holloway Carter, Vice President, Government Affairs – Federal Regulatory, Sprint Nextel Corporation (Aug. 15, 2007) ("LOI").

- (i) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (j) “Sprint” means Sprint Nextel Corporation and its subsidiaries, affiliates, predecessors-in-interest and successors-in-interest.

II. BACKGROUND

2. Under section 4.9 of the Rules, wireless and wireline service providers must report to the Commission certain outages affecting the service provider’s network as defined by the Rules.³ Upon discovery of such an outage on facilities that they own, operate, lease, or otherwise utilize, wireless and wireline service providers are required to file electronically a Notification within 120 minutes, an Initial Communications Outage Report within 72 hours, and a Final Communications Outage Report within 30 days.⁴

3. On August 15, 2007, the Bureau issued the LOI to Sprint.⁵ The LOI directed Sprint to submit a sworn written response to a series of questions relating to Sprint’s compliance with section 4.9 of the Rules. Sprint responded to the LOI on September 14, 2007.⁶ On April 22, 2008, the Bureau issued a second letter of inquiry to Sprint,⁷ to which Sprint responded on May 22, 2008.⁸ Sprint and the Bureau entered into a tolling agreement on January 14, 2008⁹ and a series of tolling agreement extensions, the last of which was executed on May 27, 2011.¹⁰

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

5. **Jurisdiction.** Sprint agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

³ 47 C.F.R. § 4.9.

⁴ *Id.*

⁵ See LOI, *supra* n. 2.

⁶ See Letter from Michael B. Fingerhut, Director – Government Affairs, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 14, 2007).

⁷ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Federal Communications Commission, to Michael B. Fingerhut, Director – Government Affairs, Sprint Nextel Corporation (Apr. 22, 2008).

⁸ See Letter from Michael B. Fingerhut, Director – Government Affairs, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 22, 2008).

⁹ See Tolling Agreement, File No. EB-07-SE-221, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Michael B. Fingerhut, Director – Government Affairs, Sprint Nextel Corporation (Jan. 14, 2008).

¹⁰ See Tolling Agreement Extension, File No. EB-07-SE-221, executed by and between John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Michael B. Fingerhut, Director – Government Affairs, Sprint Nextel Corporation (May 27, 2011).

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Sprint agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Sprint concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not, in the absence of new material evidence, use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Sprint with respect to Sprint's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or to hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Sprint agrees that it shall develop and implement within thirty (30) calendar days after the Effective Date a Compliance Plan relating to Sprint's future compliance with the Act, the Rules, and the Commission's orders. The Compliance Plan shall include, at a minimum, the following components:

- (a) **Compliance Officer.** Sprint shall designate a corporate officer with the requisite corporate authority and oversight of Sprint's network outage reporting responsibilities to serve as Compliance Officer. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan.
- (b) **Compliance Training Program.** Sprint shall establish and maintain a Compliance Training Program addressing the FCC's network outage reporting requirements, as detailed below, for all employees and agents of Sprint who perform, supervise, oversee or manage the performance of duties that relate to analyzing technical information regarding Sprint's network outages, entering information into any Sprint database(s) and/or record(s) that form the basis of Sprint's reporting of network outages to the Commission, and compiling and/or submitting Sprint's network outage reports to the Commission (each employee or agent of Sprint who performs, or supervises, oversees or manages the performance of any of the foregoing duties shall be referred to herein as a "Covered Employee").
 - (i) Sprint's Compliance Training Program shall address, at a minimum, the following subjects in order to facilitate Sprint's compliance with the FCC's network outage reporting requirements: (A) the Rules governing reporting of network outages; (B) the information and calculations required by the Rules or otherwise necessary to determine whether an outage is reportable under the Rules; (C) the time periods within which notifications and reports of reportable outages must be submitted to the FCC; and (D) the standard internal operating

procedures adopted by Sprint to identify and timely report those network outages that satisfy the FCC's reporting criteria ("Operating Procedures"). Covered Employees also shall be advised of the regulatory consequences in the event that Sprint fails to comply with the FCC's outage reporting requirements.

- (ii) All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial training session shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee.
 - (iii) Sprint shall repeat the Compliance Training Program on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
 - (iv) As part of the Compliance Training Program, Sprint shall within sixty (60) calendar days after the Effective Date prepare and distribute to all Covered Employees a written Network Outage Compliance Manual that summarizes each of the subjects addressed in paragraph 8(b)(i) hereof. Sprint shall periodically review and revise the Network Outage Compliance Manual as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (c) **Outage Reporting.** Beginning sixty (60) calendar days after the Effective Date and thereafter, Sprint shall include in any network outage report filed with the Commission the date and time that Sprint discovered the outage was reportable using the following two separate fields: (1) Date Outage Determined Reportable and (2) Local Time Outage Determined Reportable (24 hr clock (nnnn)).
- (d) **Reporting Non-Compliance.** Sprint shall report any non-compliance with section 4.9 of the Rules or this Consent Decree to the Bureau within fifteen (15) calendar days after the discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Sprint has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Sprint has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken. All such reports of non-compliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, and Paul Noone at Paul.Noone@fcc.gov.
- (e) **Compliance Reports.** Sprint shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.
 - (i) Each compliance report shall include a certification by the Compliance Officer, as an agent and on behalf of Sprint, stating that the Compliance Officer has

personal knowledge that Sprint has (A) established and implemented the Compliance Plan; (B) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (C) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 8(d) hereof.

- (ii) The certification shall be accompanied by a statement explaining the basis for the Compliance Officer's certification and must comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (iii) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Sprint, shall provide the Commission with a detailed explanation of: (A) each instance of non-compliance; (B) the steps that Sprint has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial action will be taken; and (C) the steps that Sprint has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
- (iv) All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov and Paul Noone at Paul.Noone@fcc.gov.

- (f) **Termination.** Unless stated otherwise, the provisions of this paragraph shall remain in effect for twenty-four (24) months after the Effective Date.

9. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against Sprint or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Sprint of the Act, the Rules, or Commission Orders.

10. **Voluntary Contribution.** Sprint agrees to make a voluntary contribution to the United States Treasury in the amount of One Hundred Fifty Thousand Dollars (\$150,000) within thirty (30) calendar days after the Effective Date. Payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account Number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Sprint will also send electronic notification to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, Paul Noone at Paul.Noone@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

11. **Waivers.** Sprint waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or otherwise to challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Sprint shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Sprint nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and Sprint shall waive any statutory right to a trial *de novo*. Sprint hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

12. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

13. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Sprint does not expressly consent) that provision will be superseded by such rule or Commission order.

14. **Successors and Assigns.** Sprint agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Rules and the Commission's orders.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

17. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representatives.** The individual signing this Consent Decree on behalf of Sprint represents and warrants that he is authorized by Sprint to execute this Consent Decree and to bind the company to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Charles W. McKee
Vice President

Sprint Nextel Corporation
900 7th Street NW
Washington, DC 20001

Date